

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re:

SMILEDIRECTCLUB, INC., *et al.*  
  
Debtors.

§  
§ Chapter 7  
§ (Previously Chapter 11)  
§  
§ Case No. 23-90786 (CML)  
§  
§ (Jointly Administered)  
§

TRUSTEE'S EMERGENCY MOTION TO VACATE ORDER GRANTING TRUSTEE'S  
MOTION FOR ENTRY OF AN ORDER GRANTING THE TRUSTEE AND  
PROFESSIONALS ACCESS TO DEBTORS' ACCOUNTS, EMAILS, AND  
ELECTRONICALLY STORED INFORMATION

[Relates to Docket No. 822]

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

Represented parties should act through their attorney.

Emergency relief has been requested. If the Court considers the motion on an emergency basis, then you will have less than 21 days to answer. If you object to the requested relief or if you believe that the emergency consideration is not warranted, you should file an immediate response.

Relief is requested no later than August 28, 2024.

Allison D. Byman, the Chapter 7 Trustee (the "Trustee") of the jointly administered bankruptcy estates of SmileDirectClub, Inc., *et al.* (collectively, "SmileDirect" or the "Debtors"), files this emergency motion (the "Motion") to vacate the *Order Granting Trustee's Motion for Entry of an Order Granting the Trustee and Professionals Access to Debtors' Accounts, Emails,*

*and Electronically Stored Information* [Docket No. 822] (the “Information Access Order”) and states the following in support of this Motion.

### **BASIS FOR EMERGENCY RELIEF**

1. Due to a dispute over service, Microsoft is not recognizing the validity of the Information Access Order. However, rather than refiling the motion and starting the process over, Microsoft has indicated a willingness to work with the Trustee on access to the Debtors’ information without the need for a motion and order. Accordingly, in order to expedite such access, and given that the Information Access Order impacts no party other than Microsoft, the Trustee request emergency consideration.

### **JURISDICTION AND VENUE**

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).

3. Venue is proper pursuant to 28 U.S.C. § 1408.

### **RELIEF REQUESTED**

4. On July 10, 2024, the Court entered the Information Access Order upon the request of the Trustee [Docket No. 810] (the “Information Access Motion”). The Trustee sought access to the Debtors’ accounts, emails, instant messages, calendars, contracts, loose files, databases, and other electronically stored information, kept, maintained, or otherwise stored on the platforms, applications, programs, systems, or servers of Microsoft Corporation and/or Microsoft Online, Inc. (collectively, “Microsoft”). Through subsequent discussions with Microsoft, it appears that the Trustee’s Information Access Motion may not have been properly served on Microsoft and that such requested relief may not be necessary. To facilitate the Trustee’s access to information, the

Trustee would like the Information Access Order vacated, without prejudice to the Trustee's ability to seek the same or similar relief, if needed, and Microsoft's right to object to such requested relief.

5.

**CONCLUSION**

WHEREFORE, for the Trustee respectfully requests that the Court vacate the Information Access Order and grant such other relief and further relief as is just and proper.

Dated: August 22, 2024  
Houston, Texas

Respectfully Submitted,

By: /s/ Joshua W. Wolfshohl

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D. Byman*

**Certificate of Accuracy**

I certify that the facts and circumstances described in the above pleading giving rise to the emergency request for relief are true and correct to the best of my knowledge, information, and belief. This statement is being made pursuant to Local Rule 9013-1(i).

/s/ Joshua W. Wolfshohl

Joshua W. Wolfshohl

**Certificate of Service**

I certify that on August 22, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas and by email and U.S. First Class Mail postage prepaid on the address listed below:

Microsoft Corporation and Microsoft Online, Inc.

c/o Fox Rothschild LLP

Attn: David P. Papiez

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/s/ Joshua W. Wolfshohl

Joshua W. Wolfshohl